

REMARKS

In the Office Action mailed on June 27, 2008, claims 1, 3-21 and 23-72 were rejected. By the present Response, claims 1, 21, 41, 48, 58 and 68 have been amended. Upon of the amendment, claims 1, 3-21 and 23-72 will remain pending in the present application. Reconsideration and allowance of all pending claims are requested.

Request for Withdrawal of Finality

The present application was, prior to the Office Action most recently mailed, on Appeal. Applicants had an extensive Appeal Brief that apparently was considered convincing by the Examiner. Given the tenor of the Appeal Brief, the Examiner withdrew the previous rejections and formulated new grounds for rejection. These new grounds for rejection were based upon the claims as they stood on Appeal. No additional amendments were made.

The Examiner made the most recent Action final. It is believed that this procedure is improper and Applicants request that the Examiner withdraw the finality of the Action and enter the amendments set forth on the previous pages. This request is made in order to provide the Applicants a sufficiently fair opportunity to place the case in better condition for appeal or allowance. Thus, in the interest of fairness, it is believed that the Examiner should withdraw the finality of the Action and enter the amendments.

Rejections Under 35 U.S.C. § 103

Rejections In View of Dunham and Hiraoglu

A number of the pending claims, including all of the independent claims, were rejected in view of Dunham et al., U.S. Patent No. 6,385,292 (hereinafter "Dunham") in view of Hiraoglu et al., U.S. Patent No. 6,272,230 (hereinafter "Hiraoglu").

All of the independent claims have been amended by the present Response. These amendments include addition to all of the independent claims the requirement that the image acquisition system be an energy-discriminating system. Similar subject matter was originally recited in claims 15-17. No new matter has been added.

Applicants note that the combination of Dunham and Hiraoglu do not read on the independent claims, and so cannot render those claims obvious, or any of the claims depending therefrom. In particular, all of the independent claims require, in generally similar language, an energy-discriminating acquisition system or subsystem that has a stationary source of radiation. Moreover, the claims require that the acquisition subsystem acquires the image data for three-dimensional reconstruction without rotating the image to articles.

In formulating the rejection based upon Dunham and Hiraoglu, the Examiner indicated that Dunham teaches three-dimensional reconstruction. This is, in fact, not true of Dunham. Dunham nowhere mentions three-dimensional reconstruction or any similar technique. Dunham clearly teaches conventional-two-dimensional reconstruction. On this point alone, the rejection cannot stand. Moreover, however, the claims also require that the energy-discriminating acquisition system have a source of radiation which does not rotate. Hiraoglu, relied upon by the Examiner for teaching dual energy detectors, does not mention, and is in fact antithetical to systems having non-rotating sources and detectors. Accordingly, the combination of Dunham and Hiraoglu cannot render the independent claims obvious inasmuch as they fail to teach all of the elements recited in those claims.

For these reasons, among others, the combination of Dunham and Hiraoglu cannot render the pending claims obvious. As regards additional prior art cited with regards to other dependent claims, Applicants submit that these secondary references cited by the Examiner do nothing to obviate the deficiencies of the Dunham/Hiraoglu combination noted above.

Rejections In View of Zhou and Hiraoglu

The Examiner also formulated a second rejection of all of the independent claims and many of the dependent claims based upon the combination of Zhou et al., U.S. Published Application No. 2004/0213378 A1 (hereinafter "Zhou") in view of Hiraoglu.

As noted above, all of the independent claims have been amended to recite that the acquisition system or subsystem is energy-discriminating but includes a stationary radiation source. It appears that Zhou teaches certain embodiments that can avoid rotation of the radiation source. It should be noted, however, that Zhou most often teaches that some rotation of the source may be necessary. Zhou teaches, in fact, a special type of emitter based upon nanotubes or nanowires. It is unclear from Zhou, and the Examiner has not established, that such sources can be capable of energy-discriminating operation. Absent any record to demonstrate that these sources can act appropriately to provide multiple energy levels for energy-discriminating operation, Applicants submit that Zhou is not enabling on this point. As noted above, Hiraoglu teaches dual-energy operation, but with a rotating source. Applicants further submit that if the types of sources taught by Zhou were used in the arrangement of Hiraoglu, or vice-versa, there is no evidence in the record, and none has been offered by the Examiner, to demonstrate that the Zhou nanotube emitters could perform in an energy-discriminating acquisition system.

Accordingly, the combination of Zhou and Hiraoglu cannot render the claims obvious. As before, Applicants note that any secondary references relied upon by the Examiner do not obviate the deficiencies of the Zhou/Hiraoglu combination. Accordingly, it is believed that all pending claims are patentably distinguished over the cited combinations.

Rejections In View of Hiraoglu and Dunham

All of the independent claims, and many of the dependent claims were further rejected in view of an obverse combination of Hiraoglu and Dunham. Applicants submit that this combination is deficient for the same reasons as the Dunham/Hiraoglu combination discussed above. That is, Dunham does not discuss or teach three-dimensional image reconstruction. Moreover, Hiraoglu does not teach an energy-discriminating acquisition system that does not require rotation. Accordingly, the Hiraoglu/Dunham combination cannot render the pending independent claims or the claims depending therefrom obvious. Any additional secondary references cited by the Examiner similarly fail to obviate the deficiencies of the basic combination.

Conclusion

In view of the deficiencies of the prior art combinations discussed above, Applicants submit that all pending claims are allowable and in condition for allowance. Their reconsideration and allowance are requested. Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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